



FEDERAL ELECTION COMMISSION
Washington, DC 20463

June 4, 1981

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1981-19

Robert H. Fry
Director
The Louisiana State Medical Society Political Action Committee
1700 Josephine Street
New Orleans, Louisiana 70133

Dear Mr. Fry:

This responds to your letter of April 10, 1981, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act") and Commission regulations to a proposed investment in a money market fund by the Louisiana State Medical Society Political Action Committee ("LAMPAC").

According to your letter, LAMPAC "maintains a separate segregated fund containing 'hard' dollars... which qualify to be contributed to federal candidates." A second fund is maintained which contains "soft" dollars used by LAMPAC for administrative purposes. No contributions to federal candidates are made from this "soft" dollar fund. LAMPAC wishes to withdraw the majority of these funds from both accounts, and - in nonelection years - invest them in a money market fund. Based on this description the Commission understands and assumes for purposes of this opinion that the "hard" dollar fund is comprised of voluntary contributions solicited from and made by individuals who are members of the Louisiana State Medical Society, a nonprofit corporation, ("Society") and that those contributions are solicited and made pursuant to the Act and Commission regulations. Thus the Commission further assumes that the "soft" dollar fund is comprised of corporate funds or other funds of the Society which may not be contributed or expended in connection with Federal elections. See 2 U.S.C. 441b, 441c, 441e.

You explain that there are sufficient funds in the "hard" dollar account to invest in the money market fund and such action has already been taken. The amount in the "soft" dollar account, however, is not sufficient to make such an investment unless it is joined with the "hard" dollar monies. If joined in a money market investment you state that when the funds are

withdrawn from the money market fund the two original accounts will be repaid in proportionate shares; the repayment to include principal and accumulated interest. You further state your view that nothing of value will accrue to the separate segregated fund of LAMPAC from which contributions are made to Federal candidates. Rather, you say that only the "soft" dollar account "will realize a benefit" from this procedure.

You specifically ask whether LAMPAC may properly take funds from the two accounts to invest in the money market fund. The Commission is of the opinion that the proposed investment is permissible under the Act and regulations provided that any yield and conditions related to the proposed investment are identical to the yield and conditions that would be applicable if only "hard" dollars were invested in the money market. In addition, of course, any interest (or other form of income) earned on LAMPAC's portion of the principal invested would be reportable under the Act and regulations. Moreover, if any depository institution of the type referred to in 2 U.S.C. 432(h) and 11 CFR 103.2 is used in making the investment, that institution would have to be listed on LAMPAC's statement of organization. See 11 CFR 102.2(a) and compare Advisory Opinion 1980-39.

The Act and Commission regulations set forth the reporting requirements for receipt of dividends, interest, and other receipts. See 2 U.S.C. 434(b)(2)(J) and 11 CFR 104.3(a). By specifying these receipt categories the Act seems to contemplate that political committees would invest their idle funds. See 11 CFR 103.3(a); also see Advisory Opinion 1980-39 and opinions cited therein. In Advisory Opinion 1980-39 the Commission expressly stated that investments by political committees in money market funds are permissible although subject to disclosure. The difference presented here, as compared to AO 1980-39, is that here a separate segregated fund, LAMPAC, proposes to jointly invest both political funds and other funds available only for administrative expenses of LAMPAC.

Under 2 U.S.C. 441b a corporation is prohibited from making any contribution or expenditure in connection with any election to Federal office. For purposes of 441b contribution or expenditure includes, *inter alia*, any direct or indirect payment, loan, deposit or gift of money or anything of value to any campaign committee or political organization in connection with any election to Federal office. 2 U.S.C. 441b(b)(2). A specific exception from this broad prohibition allows the use of general treasury monies of the corporation for paying the costs of establishment, administration, and contribution solicitations for a separate segregated fund that is utilized for political purposes by the corporation. 2 U.S.C. 441b(b)(2)(C), also see 11 CFR 114.1, 114.5. Use of treasury monies for the described costs is also specifically excluded from the Act's general definitions of contribution and expenditure. See 2 U.S.C. 431(8)(B)(vi), (9)(B)(v). These exceptions and exclusions effectively remove expenses for the administration of LAMPAC as the separate segregated fund of the Society from the purview of the Act provided, of course, that treasury funds spent ostensibly for the establishment, administration, and contribution solicitations of LAMPAC are, in fact, within the 441b(b)(2)(C) exemption. See 11 CFR 114.1(b). Accordingly, in view of the foregoing, it is immaterial that the "soft" dollar administrative account of LAMPAC may realize some gain from the proposed investment.

The proposed investment does, however, raise issues with respect to the investment earnings that may augment the "hard" dollar or separate segregated fund of LAMPAC, and the

requirement to maintain LAMPAC's political contribution monies in a separate segregated fund. As stated above, the Commission has previously concluded that political committees, including separate segregated funds, may invest their available cash balances in various ways: interest bearing accounts in banks and savings and loan associations, purchase of Treasury bills, and investment in money market funds. Where such an investment is proposed to be made in a joint fashion using both the accumulated political contributions (in the separate segregated fund) and the treasury funds of the sponsoring corporation, the question is raised whether the political fund, by virtue of the joint investment transaction with its connected corporation, would receive a direct or indirect payment, loan, advance or other thing of value from that corporation.

In this opinion request LAMPAC states that the "hard" dollar account has sufficient funds by itself to make a money market investment. LAMPAC also states that "[n]othing of value shall accrue to the separate segregated fund," which is used to make political contributions, and that the only fund that may realize "anything of value" will be the "soft" dollar or administrative account. LAMPAC expresses this view because the joint investment with LAMPAC "hard" dollars is necessary for the administrative account to have the opportunity of investing in a money market fund, while LAMPAC's political fund is not dependent on joinder with the administrative fund in order to invest in the money market fund.

From this description the Commission understands that any increased yield as a result of joining "hard" and "soft" funds will inure to the "soft" fund rather than to the "hard" fund. For example, if the rate of yield is 16% on a combined \$15,000 investment (\$10,000 from "hard" and \$5,000 from "soft") and 15% on a \$10,000 investment if made only by the "hard" fund, the 1% difference (on the total \$15,000) may be paid only to the "soft" fund.

In this situation the Commission concludes that joinder for purposes of investment in a money market fund of funds from LAMPAC's separate segregated fund account and from its administrative fund account would not result in any indirect or direct payment, loan, deposit or gift of money or anything of value by the LAMPAC administrative fund (or by the Society) to the LAMPAC separate segregated political fund. The flow of the thing of value or benefit here is from the political fund to the administrative fund and not the converse. Compare Advisory Opinions 1981-6 and 1981-20. The Commission stresses, however, that the foregoing conclusion is expressly conditioned on LAMPAC's representations, on the Commission's stated understanding of those representations, and on the absence of any facts indicating that any favorable or preferential treatment (e.g., as to rate of yield, required minimum investment, terms of withdrawal, etc.) would be given by the money market fund to LAMPAC (or the Society) that would not be given if the investment was made solely from LAMPAC's separate segregated political fund.¹ The conclusion is further conditioned on compliance with either of the following procedures when the joint investment is withdrawn from the money market fund: (a) the money market fund shall issue separate checks (including a return of principal and proportionate interest) to the LAMPAC political fund and to the administrative fund; or (b) if a single combined check is issued, such check shall be deposited in a special clearing account,

¹ The return or yield paid on any investment by LAMPAC, whether made by itself or as described here, must be commercially reasonable and consistent with the terms given by the payor in other investment transactions that are not distinguishable in any material respect. See 11 CFR 100.7(a)(1)(iii), 114.10.

established specifically for this purpose at a depository designated by LAMPAC (i.e. 11 C.F.R. 102.2 (a) (1) (vi) and 103.2), which account is then used to separate and transmit the correct shares of principal and interest payable respectively to the political fund and the administrative fund.

The final issue raised is whether the joint nature of the investment, as proposed in this request, would result in a violation of the Act's requirement that LAMPAC maintain its voluntary political contributions in a separate segregated fund. 2 U.S.C. 441b(b)(2)(C).

Neither the Act nor Commission regulations further define the phrase "separate segregated fund" although the definition of political committee includes "any separate segregated fund established under" 2 U.S.C. 441b(b).² 2 U.S.C. 431(4)(B), 11 CFR 100.5(b); also see 11 CFR 102.1(c). The term, however, has been interpreted by the Supreme Court in Pipefitters v. United States, 407 U.S. 385 (1972), as requiring a strict segregation of political funds from treasury funds. The Commission has also explicitly argued and the U.S. Court of Appeals for the District of Columbia has agreed that the requirement for a political fund to be separate and segregated from treasury funds means that no part of the monies of a political fund may be commingled even temporarily with dues (or treasury) monies. See American Federation of Labor and Congress of Industrial Organizations ("AFL-CIO") v. FEC, 628 F.2d 97(D.C.Cir., 1980), cert. denied, ___ U.S. ___, 101 S.Ct. 397 (1980).

The underlying violation in the case was the transfer of funds from general treasury monies of the AFL-CIO to its separate segregated fund in circumstances where the transfers occurred solely for the purpose of repaying loans previously made by the separate segregated fund to the political education fund of the AFL-CIO. This education fund consisted of general treasury monies rather than voluntary political contributions from union members. The appellate court indicated its agreement with the District Court³ that 2 U.S.C. 441b prohibited any part of the monies in the segregated political fund from being "co-mingled with regular dues money, even temporarily, but the statute is not specific as to what is to be segregated from what." AFL-CIO, 628 F.2d at 100. The District Court considered the central importance to 441b of

² In addition, by regulation the Commission has required that funds of a political committee be segregated from and not commingled with any personal funds of officers or agents of the committee (or with the personal funds of any other individual) and has indicated that this regulation may be applicable in the context of 2 U.S.C. 441b and Part 114 of the regulations. 11 CFR 102.15.

³ The United States District Court for the District of Columbia heard the case on stipulated facts and on cross motions for summary judgment. It issued an unreported order on June 16, 1978, stating in pertinent part that AFL-CIO's transfers of funds from a treasury fund to its political committee, a separate segregated fund, violated 2 U.S.C. 441b.

maintaining the voluntary funds wholly apart from general treasury funds.⁴ The Commission took a position as to the evil sought to be prevented by the requirement that individual contributions be kept in a separate segregated fund: the evil is commingling and intertwining funds so as to obscure their sources.

In the context of the joint investment proposal presented here it is apparent that no funds will be transferred to LAMPAC's separate segregated fund from either the LAMPAC administrative account or any other Society funds, i.e. corporate treasury funds. Rather the funds will be paid out of each account to the money market fund as an investment by both accounts. Upon withdrawal of the money market investment the principal provided from each LAMPAC fund will be returned to the respective fund together with proportionate interest or earnings on the principal provided by each.⁵

Significantly, Commission regulations with respect to investments of political committee funds require that the principal, and any interest or other form of yield, be returned to an account in a designated campaign depository before any expenditures are made from those funds. 11 CFR 103.3(a). The amount of any dividend, interest, or other payment to the investing committee must be reported by the committee. The payor on the investment must be identified if the amount received by the committee exceeds, in the aggregate, \$200 within a calendar year; the date and amount of any such receipt must also be given on the reports filed by the investing committee. 11 CFR 104.3(a)(4)(vi).

Thus in view of these requirements, which LAMPAC must observe in this situation, no expenditures would be made for political purposes from any commingled funds -- a fund that is comprised of both voluntary political contributions by individual Society members and treasury funds from the administrative account of LAMPAC (or the Society). Also, the strict segregation required by 441b can be maintained provided the foregoing requirements are observed as to use of a designated LAMPAC depository before making political expenditures (or contributions) from the principal invested or any proceeds received. The fact that the original receipt and sources of the contributions invested by LAMPAC are required to be reported by LAMPAC avoids the problem of the obscurity of the sources of those funds. The required reporting of any investment income also assures that the source of such income if in excess of \$200 in a calendar year from the same payor, is disclosed.

Accordingly, the anti-commingling aspect of the requirement to maintain a separate segregated fund is satisfied in this situation since no payment would be made into LAMPAC's

⁴ The Commission's position reflected the definition of separate segregated fund set forth in two cases: Pipefitters v. United States, 407 U.S. 385, at 414 (1972) and United States v. Boyle, 482 F.2d 755 at 761, n.16 (D.C. Cir., 1973). In Pipefitters the Supreme Court concluded that a separate segregated fund "must be separate from the sponsoring union only in the sense that there must be strict segregation of its monies from the union dues and assessments." Pipefitters, 407 U.S. at 414. In Boyle the appellate court noted the importance of maintaining a separate segregated fund and discussed commingling as problematic when voluntary and involuntary funds are commingled and then a portion of those commingled funds are expended for political purposes. The court stated the underlying principle that expenditures from a political fund that is commingled with involuntary funds are presumed to consist in part of both voluntary and involuntary funds. Boyle, 482 F.2d at 761, n.16.

⁵ See the discussion above with respect to possible circumstances where the investment yield for the political fund would have to be reduced to avoid receiving a prohibited contribution in kind from the administrative fund.

political fund from any treasury monies in the administrative account and since compliance with the depository and reporting requirements of the Act and regulations will assure that LAMPAC's political fund is strictly segregated from and not intertwined with funds which are corporate treasury monies.

The Commission expresses no views as to the tax ramifications of the transaction presented here since those issues are not within its jurisdiction.

This response constitutes an advisory opinion concerning application of the Act, or regulations prescribed by the Commission, to the specific transaction or activity set forth in your request. See 2 U.S.C. 437f.

Sincerely yours,

(signed)

John Warren McGarry
Chairman for the
Federal Election Commission

Enclosures (AO 1980-39, 1981-6, 1981-20)